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EXHIBIT 5
DATE 3-28-07
HB 844

March 28, 2007

Members of the Appropriations Committee

Dear Representative:

I represent landowners and senior appropriators from the Four Corners area. On their behalf, I ask you to vote no on passing HB 844 out of appropriations because the bill is harmful to senior appropriators. HB 844 is not a simple benign fix as some suggested at yesterday's hearing. HB 844 involves a major change in Montana water policy that was considered and rejected by the House Natural Resources Committee earlier this session. Additionally, HB 844 creates the legal fallacy that groundwater is not connected to surface water.

HB 844 Will Harm to Senior Appropriators:

The legislature closed basins due to concerns about over appropriation and the need to protect senior appropriators. HB 844 does away with protecting senior appropriators because it promotes new groundwater wells and places the total burden of proving adverse effect on the senior appropriator. Chairman Walter McNutt's bill, HB 831, allowed ground water development; however, it required the new appropriator to shoulder some of the burden of protecting senior appropriators. HB 844 will promote unfettered pumping of groundwater that will undoubtedly negatively impact senior appropriators who had prior protection under the basin closure laws.

HB 844 Changes Montana Water Law to Allow Unrestricted Pumping of Groundwater:

HB 844 eliminates the basin closure goal of protecting senior appropriators because it will allow anyone without exception to drop a well and pump groundwater. This is a major change in the current law that was meant to allow use of groundwater while protecting senior appropriators. Proponents of the HB 844 will say that the bill provides that senior rights must be satisfied; however, I am currently involved with litigating this issue and it is heavy burden on a senior appropriator to protect their senior water rights. The reality is that without the policy protection provided to senior appropriators, as provided by current basin closure laws and that would be stripped by HB 844, it will be even more unduly burdensome and expensive for senior appropriators to protect their rights.

HB 844 Contains Policy Issues That Were Considered and Rejected by the House Natural Resources Committee:

Yesterday, proponents of the HB 844 suggested that the bill contains new policy considerations that did not have time to get a fair hearing in the process. Actually, the main

policy consideration in HB 844, to do away with basin closure protections, was included in HB 373 and was fully debated, strongly opposed and soundly defeated. Unfortunately, HB 844 is simply an end run around normal legislative process that should allow all citizens to be heard and their concerns addressed.

HB 844 Creates the Legal Fallacy That Groundwater is Not Connected to Surface Water:

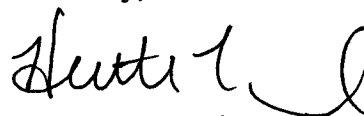
Obviously, some ground water is connected to surface water. Just as the Trout Unlimited created a legal fiction that all groundwater was connected to surface water, this bill creates the legal fiction that all groundwater is not connected to surface water. In fact, HB 844 would allow development of a huge well right next to a river, even though a surface water permit would not be allowed. HB 844 is problematic because it creates the legal fiction that groundwater is not connected to surface water and does not promote common sense equitable use of water in Montana.

Conclusion:

Contrary, to suggestions by proponents that development would be thwarted without HB 844, there was debate and development of policy (HB 831) that would allow development within guidelines that required developers of groundwater to shoulder some of the burden of protecting senior appropriators. The real difference in the bills is who pays. HB 844 weakens the protection of senior appropriators and creates a system where those with money can override the longstanding water rights of other Montana citizens.

I will be in Helena today to testify against HB 844. If you have any questions, I would like to discuss these issues further with you. Please vote no on HB 844 to protect senior appropriators and not allow the total circumvention of the public process that is normally used to create sound, fair policy.

Sincerely,

A handwritten signature in black ink, appearing to read "Hertha L. Lund", followed by a large, stylized flourish or loop.

Hertha L. Lund
Wittich Law Firm